

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Establishment of a )  
Working Case for the Writing of a New )  
Rule on the Treatment of Customer )  
Information by Commission Regulated ) File No. AW-2018-0393  
Electric, Gas, Steam, Heating, Water, )  
and Sewer Utilities and their Affiliates )  
and Non-Affiliates. )

**RESPONSE REGARDING COST OF COMPLIANCE**

On February 18, 2020, the Staff of the Missouri Public Service Commission ("Staff" and "Commission," respectively) submitted its third draft rule regarding the treatment of customer information by Commission-regulated electric, natural gas, steam heating, water, and sewer utilities. On February 26, 2020, the Commission issued its *Order Requesting Cost of Compliance Responses* ("Order"). In support of its *Response Regarding Cost of Compliance* ("Response"), the Company states as follows:

**BACKGROUND**

1. While the *Order* specifically asked utilities to discuss the costs of compliance with the proposed rule, Ameren Missouri also believes it is important to establish a background against which Ameren Missouri's responses are provided. Many of these costs are very difficult to quantify, but we have attempted to anticipate the impact that adoption of the rules in their current draft 3 form will have upon Ameren Missouri and each of its affiliates (collectively "Ameren"). In summary, these will disrupt the significant investments Ameren has already made in improving its data collection and management tools. In the contracting area, these rules will require the renegotiation of multiple existing contracts, and revisions to each of our existing contract templates. The contract language in the rules will also prevent Ameren from utilizing any cloud based solutions, as our

repeated experience is that cloud services providers do not accept language that the draft rules would mandate, and will have an adverse effect on the timing and cost associated with Ameren's ongoing Contract Lifecycle Management Program. The absence of any sort of grace period for the effective date of the rules or carve outs for existing contracts, will also drive increased costs.

2. It is important to know that the Ameren companies have recently undertaken multiple, large-scale projects to enhance overarching data privacy practices, standardize contracting procedures, enhance customers' online experiences, and other efforts that have required extensive resources, both in man hours and capital. We have investigated industry best practices, accounted for changing legislative and political landscapes, and created an enterprise-wide effort to make sure the policies, training, digital expenditures, and these initiatives generally have been both efficiently and cost-effectively expended. Unfortunately, the proposed rule will unwind, modify mid-stream, or require complete overhauls of these initiatives.

3. For example, the requirements in the draft rules covering specific data privacy policy language will require Ameren to expend a significant amount of effort to revise our recently revised Data Protection, Privacy and Security Policy, and interrupt ongoing data mapping and other exercises that Ameren has launched and is actively pursuing to manage its data management obligations. Many of those efforts are focused on customer data, as well as time sensitive regulatory requirements (e.g. CIP-013), and would be negatively impacted by a need to meet the requirements of the draft rules. Furthermore, the draft rules will result in a need to re-architect and identify system improvements and necessary upgrades and modifications that may be necessary to ensure compliance.

Unfortunately, the best we can do is to provide an educated guess regarding the full cost impacts; however Ameren Missouri believes that the cost and impact will be significant and in an amount exceeding \$20,000,000. This amount is purely an estimate based on internal knowledge of revisions that would be necessary to incorporate definitional changes and contractual requirements into numerous enterprise-wide systems, create and modify ongoing processes, halt and reformulate training our recently revised internal privacy policy that has already rolled out, and numerous other factors. These costs do not include any associated legal costs or contractual penalties, and are limited strictly to the administrative and resource costs associated with Ameren's digital employees. Further, these costs are not broken out below, although certain logistic concerns that feed into these overall costs are discussed in more detail.

4. Ameren Missouri is appreciative of the work and thoughtfulness that Staff has put into the composition and revision of this customer information rule. Data privacy is an important issue and will only continue to grow in gravity; as the electronic transfer of information continues and the world becomes more automated, the protection of personally identifiable information will only grow in importance. However, it is imperative to take into consideration many pragmatic and logistical factors in adopting a data privacy rule, and to acknowledge that such rules cannot occur in a vacuum. In particular, the following facts should be considered in the establishment of any data privacy rule:

- Currently, there are numerous efforts nation-wide to implement state and federal legislation regarding customer data privacy. Some of these actions have been spurred, in part, by the California Consumer Privacy Act ("CCPA") and the European Union's General Data Protection Regulation ("GDPR"). Please see Attachment 1, which is a data privacy legislation heat map of the United States from January 2020. Although many legislative sessions have been truncated to

mitigate COVID-19 exposure, meaning many bills deemed non-essential will not move forward this session, three data privacy or cyberattack related bills were introduced in Missouri<sup>1</sup> and four data privacy bills were introduced in Illinois,<sup>2</sup> jurisdictions directly relevant to Ameren.<sup>3</sup> In other words, the legal landscape regarding data privacy is evolving as much as the enabling technology.

- Utilities have entered into service contracts for a significant period of time related to the handling of customer information. As these contracts reach their terms and are renegotiated, Ameren Missouri has made significant efforts to re-examine customer information protections and strengthen those provisions in light of current laws, regulations, and best industry practices. Specifically, Ameren has recently completed an effort to develop and update all contract templates that involve the procurement of goods and services by any affiliate. Each template includes specific protections related to confidentiality, cyber security, data protection, indemnity, and insurance coverage; all in an effort to protect and manage all information entrusted to Ameren or its suppliers, including customer information.
- Utilities are not just charged to be good stewards of customer information, but are also responsible for the protection of significant infrastructure investments vital to maintaining reliability of the electric grid. Maintaining pace with the evolution of the Federal Energy Regulatory Commission's ("FERC") Critical Energy Infrastructure Information ("CEII") rules and the North American Electric Reliability Corporation's ("NERC") Critical Infrastructure Protection ("CIP") has kept utilities like Ameren Missouri at the forefront of data protection.

5. This background is provided to assure the Commission and the participants in this workshop that utilities (including Ameren Missouri) take the protection of the information in its care very seriously. We *must* take data protection very seriously. When Ameren Missouri and its peer utilities submit comments on any manner of data protection

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<sup>1</sup> HB 2749, HB 1499, and HB 2375.

<sup>2</sup> HB 5396, HB 5288, SB 3896, and HB 5603.

<sup>3</sup> This list does not include reference to any federal legislation introduced.

standards, we do so knowing our responsibilities as the repositories of significant amounts of critical and restricted information.

## **DISCUSSION**

6. Definitions. 20 CSR 4240-10.XXX(1)(B) is the provision of the proposed definitions that could cause a significant cost increase, dependent upon how the provisions is implemented. Ameren Missouri is concerned that this definition of personally identifiable customer information, as stated, could increase its costs of protecting the stated information. The information listed as personally identifiable in the proposed draft lists several individual components, and does not anticipate that any of the distinct components may only be truly identifiable when used in combination with other information. For example, a driver's license or social security number would always be considered personally identifiable information. Other information may only be identifiable when used in combination with other information, such as a zip code. This distinction is important because, for example, a utility's system may have special encryptions and other protections in place to protect a social security number that it would not deem necessary for the protection of usage data. To be clear, the usage data would still be treated as confidential; it just may not be encrypted on the utility's systems in the same manner as a social security number. Requiring the same level of encryption across the board will take additional IT work and revisions to a number of existing systems to ensure these protections are in place.

7. Utility Related Services. 20 CSR 4240-10.XXX(2) is another provision whose cost impacts are dependent upon the interpretation of the provisions contained therein. Specifically, if "utility related services" is extended to include activities such as account payment handling, management of energy efficiency and demand response

programs, or account collections efforts, then the financial impacts of this rule will be somewhat minimized. Still, this would only relieve costs associated with the renegotiation of multiple contracts, and are not already considered in the \$20,000,000 estimate previously provided.

8. Contracting Issues. Both 20 CSR 4240-10.XXX(2) and (3), regardless of the interpretation of utility-related services, still present significant problems.<sup>4</sup> Specifically, these provisions require, rather than encourage, certain contract terms between the utility and its vendors.<sup>5</sup> As identified above, Ameren has implemented numerous improvements to its contracting process in an effort to ensure the proper review of contracts (including data privacy risks) prior to execution and throughout the contract lifecycle. Those improvements are based upon our Contract Development and Use Policy which mandates (among other requirements) attorney review of all contracts involving material risk. While Ameren makes diligent efforts to negotiate off our templates, to ensure appropriate data protection terms, and conditions are in place, we are not always able to get the precise language that is desired. Requiring Ameren Missouri to guarantee certain language in all vendor contracts is not possible and will have a deleterious impact on its ability to do business and provide an appropriate level of services to its customers. For example, suppose a utility wants to enter into a contract with an entity such as google or amazon to implement an energy efficiency program utilizing smart home technology. The utility is unlikely to have the market power to persuade these entities to enter into a contract

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<sup>4</sup> While grandfathering existing contracts would help to an extent, there are still several issues with the proposed rule, as drafted, that will cause cost increases.

<sup>5</sup> As noted in the *Supplemental Response to Draft Rule* submitted jointly by Ameren Missouri and the Evergy Companies on December 9, 2019, these contract mandates go beyond what is even required by NERC's CIP rules related to protections deemed necessary to protect the reliability of the power grid, which is subject to numerous attempted cyberattacks.

requiring the return of customer-specific information within 10 days of the contract's termination. This would more accurately represent an opportunity cost to customers, which would be difficult to quantify. But it is an issue worth raising.

9. Expanding on that example, the 10-day period for the return or destruction of personally identifiable customer information reference as specified in subsection 4 of Utility Related Services is particularly problematic as it will cause issues with vendors, particularly those that offer cloud-based solutions for multiple customers. The 10-day period is an extremely tight timeline to work within for any vendor, but in speaking with Ameren's transactional attorneys, as well as our Cyber GRC, Vendor Management and Data Protections organizations, each of whom are directly involved in all contracts related to cloud-based service providers, we are aware of no such provider who will agree to the language mandated in the rules, as each of them have their own data protection, preservation and storage requirements. Moreover, having a blanket requirement that calls for the return of the information may create additional security issues.

10. In summary, mandating specific contract language requirements such as those included in the proposed rule, will result in two incremental cost increases in particular: 1) late-stage adjustments to existing contract templates and contract lifecycle processes; and 2) the loss of legal expense savings after implantation of the system for the anticipated increase of attorney time necessary to negotiate contracts that, with other terms, would not have caused push-back from vendors.

11. Privacy Policy. As mentioned above, Ameren Missouri recently redrafted its customer-facing privacy statement and associated terms and conditions ("T&C") at <https://www.ameren.com/privacy>. This re-drafting drew upon several well-recognized

examples in developing the content and structure of its statement including, but not limited to, Exelon.com, MasterCard.com, and Disney.com. This statement generally identifies relevant laws, discloses how customer data may be used, and addresses numerous other data privacy concerns facing multiple industries. Ameren Missouri maintains that its privacy statement and T&C are sufficiently developed to address Staff's concerns: There are multiple general disclosures regarding how information is used, what jurisdictions apply, etc. If the proposed rule is interpreted in such a manner that the majority of these general statements are sufficient, then the costs to comply can be kept to a minimum. One particular section of the proposed rule, however, will impact Ameren Missouri's privacy statement and T&C regardless: the requirement to "identify applicable (federal, state, county, city, etc.) laws, rules, orders, or judicial processes (e.g., subpoenas or court orders) and utility tariffs, which support, limit, or prohibit disclosure, if known." Ameren Missouri suggests that such a list would be more overwhelming than helpful for its customers. The following is a partial and generalized list of various applicable laws that could be relevant for our customers:

- Financial Services Modernization Act of 1999
- Federal Trade Commission ("FTC") Act
- FTC's "Red Flag Rules"
- Missouri Data Breach Notification Law
- 63 counties and 500 towns that not only have courts with subpoena power, but that may have rules in place requiring disclosure of information related to occupancy, electrical or natural gas safety, etc.<sup>6</sup>

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<sup>6</sup> Currently, compliance with local laws and ordinances requiring disclosures (exclusive of subpoenas) are coordinated through Ameren Missouri's designated community liaisons who handle these relationships rather than through a central repository.



12. While in theory it would be possible to compose a section in its privacy statement to accommodate this level of disclosure, it would take time and effort to do so. For example, the Company currently relies on its local government liaisons to manage disclosures required by ordinances, etc., so this information would need to be coordinated and gathered to a centralized repository and more centralized processes created for consistent monitoring. Even overcoming these barriers, it is important to note that *all* of this information is in flux. As previously discussed, there is the potential for additional federal and state legislation and rules that may come into play, including (depending on where customers are shareholders are located) GDPR- and CCPA-style laws emerging nationwide. The Company could be facing a constantly changing and growing "applicable laws" section of its privacy statement if it is required to include a comprehensive list. We regularly receive additional Ameren Missouri does not see a need for the Commission to establish another set of standards through which to protect this information, which is already well-regulated.

13. Realistically, customers are aware of general legal requirements applicable to their lives. Customers know that there are data protection laws in place that local ordinances may require that the solar panel on their house be disclosed to local fire departments, that a local court could issue a subpoena for their utility records. Of course, if a customer ever has a question, the Company's customer experience personnel will be happy to provide or coordinate answers to those questions. Ameren Missouri strongly suggests that a revision of this portion of the rule is still necessary.

## CONCLUSION

14. The expansion of personal information specific to customers, contract provisions, third-party requirements/agreements, and the impact on Ameren's overall customer programs, privacy program and policies, supply chain and third-party risk management process is immeasurable. Initial estimates across our meter-to-cash processes, energy efficiency and customer programs, and immediate revocation of privacy, third-party risk / CIP-013, contract template updates, and a contract system implementation would present a material impact to our ratepayers, and would require in excess of \$20 million to accommodate and/or address because of the disruption to existing workstreams and projects, as well as scope changes to numerous existing initiatives.

15. Of course, there are also unquantifiable costs associated with the Company's reputation and customer relationships. Ameren has diligently been updating its digital capabilities to provide a better experience to its customers; specifically, we have dedicated considerable resources to the provisions of services and capabilities to customers that create a similar experience to digital interactions they experience elsewhere. In order to make the changes necessary to accommodate the requirements of the proposed rule, we would have to backtrack a lot of that work and progress; the service customers have come to expect from us would be reduced or eliminated if we could not leverage modern technologies such cloud-computing-services. These technologies are highly reliable, scalable, enhance Ameren's security posture, and afford Ameren's developers the ability to provide services and capabilities to our customers through a greater speed to value and with even better quality than through legacy development efforts.

16. We have expended considerable equity and investment in establishing an overarching Data Privacy and Protection program at Ameren that has embedded both cybersecurity and privacy into how we interact with our supply chain and protect customer information throughout its lifecycle, which is also inclusive of NERC's CIP-013 Supply Chain standard. A wholesale revision to the underpinned elements across these programs and the elements that have been or will be implemented, will require an immediate halt to these projects in order to validate, adjust, and accommodate the proposed rule. The cost will be high, and we hope that additional rule revisions can be accomplished before the rulemaking process itself is begun so that these concerns can be further addressed.

Respectfully submitted,

UNION ELECTRIC COMPANY,  
d/b/a Ameren Missouri

*/s/ Paula N. Johnson*

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to the parties of record on this 20<sup>th</sup> day of March, 2020.

*/s/ Paula N. Johnson* \_\_\_\_\_  
Paula N. Johnson